has through mistake transgressed the law and invaded the right of another it is just that the transgressor and not the innocent party should suffer. But where one has, through mistake of law, injured himself and benefited another to whom he owed no such duty, justice requires no denial of relief. Keener, Quasi-Contracts 87 et seq. The only justification for the denial generally adhered to is public policy. But the objections commonly urged, that the granting of relief in such cases would increase litigation unduly, would render the law uncertain, or would encounter a difficulty of proof, *Hardgree* v. *Mitchum* (1874) 51 Ala. 151, are without serious merit, as reasons why the law should not be called upon to prevent injustice. Evans' Pothier (1826) 340; Keener, Quasi Contracts, supra; *Culbreath* v. *Culbreath* (1849) 7 Ga. 64; *Mansfield* v. *Lynch* (1890) 59 Conn. 320. The excuse of policy finds by far its strongest ground in the class represented by *Norwood* v. *Railroad Co.*, supra, where the refusal is connected with the attempt to reopen or renew court proceedings.

UNIFORMITY OF ASSESSMENT IN OCCUPATION TAXES.—Under Constitutions either silent upon the assessment of occupation taxes or providing that "all taxes shall be uniform upon the same class of subjects," the power of the legislature to classify occupations is unquestioned. *Singer Mfg. Co.* v. *Wright* (1895) 97 Ga. 114; *Walcott* v. *People* (1868) 17 Mich. 68. Fixing a basis of such classification is a purely legislative function and not within the province of the courts, *Commonwealth* v. *Canal Co.* (1888) 123 Pa. 594, though if wholly arbitrary and unreasonable, the courts may interfere. *Seabolt* v. *Commissioners* (1898) 187 Pa. 318; *State* v. *Western U. T. Co.* (1882) 73 Me. 518. The classes being established the question of uniformity within them, *State* v. *Montgomery* (1899) 92 Me. 433, is judicial. *City of Aurora* v. *McGanum* (1897) 138 Mo. 38. Whether an apparent discrepancy in the operation of a tax, therefore, is due to the basis of classification, or simply to the operation of the act within a given class, is important in determining the attitude the court should take in passing upon its constitutionality.

Classification need not be based upon essential differences in the nature of the subjects taxed, but may be based upon the want of adaptability of the various subjects to the same method, or even upon well-grounded considerations of public policy. *Commonwealth* v. *Canal Co.*, supra. As long as it is based upon real distinctions and not irrelevant ones as a cloak to discrimination it is valid. *Majorin* v. *Trust Co.* (1897) 170 U. S. 283; *Rosenbloom* v. *Nebraska* (1902) 64 Neb. 348. If the power of classification is based upon consideration as broad as these, it is evident that in certain cases it may be difficult to determine just what the basis of classification is. In occupation taxes, it is usual to classify according to the kind of business. The classification may be pushed further and it has been held that different phases of the same kind of business may give rise to different classes. *City of Atlanta* v. *Jacobs* (1906) 125 Ga. 523; *Singer Mfg. Co.* v. *Wright*, supra; *State* v. *Montgomery*, supra. If the act provides for a different rate of taxation or basis of assessment on several subjects, the classification is clear.

Some courts, however, have lost sight of a classification, evident on the face of the act and perfectly valid, and held the act unconstitutional as resulting in non-uniformity within the same class, *Caldwell* v. *City of Lincoln* (1886) 19 Neb. 569, or held it constitutional only by stretching a point in finding uniformity within the same class. *Goodwin* v. *Mayor, etc., of Savannah* (1874) 53 Ga. 410. The only true classification, is that contemplated by the Legislature as shown by the divisions in the act, or which must necessarily result from the operation of the act. Cf. *Ex parte Thornton* (1882) 4 Hughes 220. If, therefore, in the absence of express Legislative intent, individual and separate applications of the act result in a division of subjects which is casual only and not a necessary result of the operation of the Act, it is evident that such a division cannot be said to be due to the basis of classification. The application of this rule is well illustrated in a recent Georgia case, *Wright* v. *Southern Bell Telegraph and Telephone Co.* (1906) 56 S. E. 116, involving a tax act which provided for an occupation tax upon express, telegraph and telephone companies equal to the difference between 2½ per cent. of the gross receipts and the ad valorem property taxes. It is apparent that those companies whose ad valorem taxes were less than 2½ per cent. of their gross receipts would pay an occupation tax, while all others would not. The question arises whether such a division formed a basis of classification. In the ordinary course of events, under like conditions, the gross receipts of such companies would increase with the property value, or the property value remaining constant as the earning power. Any excess in a given case, of the ad valorem taxes over 2½ per cent. of the gross receipts would, therefore, result simply as a casual and not a necessary consequence of the operation of the act. The suggestion that this is a classification is therefore untenable. Even assuming such a basis of classification, it seems equitable or at least not so discriminating as to justify a judicial interference. The court, assuming arguendo, though with hesitation, this classification, held the act unconstitutional as not being uniform within the same class. The constitutional provision as to taxes being ad valorem, being inapplicable to occupation taxes, *McGhee* v. *State* (1893) 92 Ga. 21, the only requirement is that the method adopted should apply with actual uniformity. *Kitanning Coal Co.* v. *Commonwealth* (1875) 79 Pa. 100; *City of St. Louis* v. *Bircker* (1879) 7 Mo. App. 169. The basis of assessment in the principal case meets fully this requirement and is peculiarly equitable. The argument of the court was that the act did not provide for any fixed rule as to the assessment of the tax and that the amount of the taxes to be paid would depend upon the peculiar condition of each company. The same reasoning would apply equally to a tax of a fixed per cent. of the gross receipts, which the court admitted would be valid, and pushed to its logical result would exclude all systems except those assessed at a fixed equal sum in each company, the most inequitable system of taxation. If 2½ per cent. of the gross receipts would be a uniform basis of assessment, and the ad valorem taxes are based in a uniform system, as they must be by the Constitution of Georgia, it is difficult to perceive why the difference between the two does not form an equally uniform basis. Such a system is frequently employed in franchise taxes and is most equitable as a basis of a privilege tax.

LIS PENDENS IN FAVOR OF THE DEFENDANT.—Naturally the rule of lis pendens will be applied in the majority of cases in favor of the plaintiff as against alienees of the defendant. It applies equally in favor of the defendant. *Garth* v. *Ward* (1741) 2 Atk. 174; *Henderson* v. *Wanamaker* (1897) 79 Fed. 736; *Welton* v. *Cook* (1882) 61 Cal. 481; *Hurd* v. *Case* (1863) 32 Ill. 45; *Olson* v. *Leibpke* (1900) 110 Ia. 595. Lis pendens originated at common law, and is applicable to proceedings in law and equity. *Murray* v. *Ballou* (1815) 1 Johns. Ch. 566; Freeman, Judgments §192. First definitely formulated by Lord Bacon as his Twelfth Ordinance in Chancery, Bacon's Law Tracts 282, as defined by a current writer the general rule is that during the pendency of a suit involving property, "neither party to the litigation can alienate the property in dispute, so as to affect the rights of his opponent." 2 Pom. Eq. Jur. §633. Two theories are advanced as the foundation of the rule. Treating it as a phase of the law of notice, the courts have said that all persons are presumed to have knowledge of all judicial proceedings, and therefore take property from a litigant pendente lite with an implied notice of the litigation and under an implied obligation to abide by the results thereof. *Worfley* v. *Earl of Scarborough* (1746) 3 Atk. 392; *Randall* v. *Duff* (1889) 79 Cal. 115; 1 Story, Eq. Jur. §405. The explanation more generally accepted is that the doctrine "is not founded on any principle of courts of equity with regard to notice, but on the ground that it is necessary to the administration of justice that the decision of a court in a suit should be binding, not only on the litigant parties, but on those who derive title from them pendente lite, whether with notice of the suit or not." *Bellamy* v. *Sabine* (1857) 1 De G. & J. 564; see also *Norris* v. *Ile* (1894) 152 Ill. 190; *Turner* v. *Houpt* (1895) 53 N. J. Eq. 526; *Dovey's Appeal* (1881) 97 Pa. 153; 2 Pom. Eq. Jur. §632. The nature of the rule would seem to argue against the idea that it is based upon principles of notice; and the contrary view seems to be further strengthened by the law governing the commencement, and the continuity of the rights of the defendant.

It is clear that the lis pendens in favor of the defendant is not separate and distinct from that in favor of the plaintiff, requiring some formal action by the defendant for its inception. The lis pendens commences upon the filing of the initial pleading and the service of process. *Grant* v. *Bennett* (1880) 96 Ill. 313; *Haughwout* v. *Murphy* (1871) 22 N. J. Eq. 531; *Butler* v. *Tomlinson* (1862) 38 Barb. 641, and, under statute, upon the filing of the notice of lis pendens. *Pitt* v. *Rodgers* (1900) 104 Fed. 387. Accordingly, some few decisions and intimations to the effect that the lis pendens in favor of the defendant does not exist until his pleading is upon record, *Walker* v. *Goldsmith* (1886) 14 Or. 125; *Corwin* v. *Bensley* (1872) 43 Cal. 253, are obviously incorrect, in the absence of a statute requiring the defendant to file a notice. *Hall Lumber Co.* v. *Gustin* (1884) 54 Mich. 624; *Zane* v. *Fink* (1881) 18 W. Va. 693; *Moss* v. *N. Y. El. Ry. Co.* (1891) 27 Abb. N. C. 318; and see *Jorgenson* v. *Minn. etc., Ry. Co.* (1875) 25 Minn. 206. Where the defendant introduces new subject matter in his answer or by way of cross-bill or counterclaim, a lis pendens is then created respecting that subject matter, and not relating back to the beginning of the suit. *Garver* v. *Graham* (1897) 6 Kan. App. 344; *Hart* v. *Hayden* (1881) 79 Ky. 346.

It is well settled that the continuity of the plaintiff's right under the lis pendens is broken by failure to make full prosecution. *Tinsley* v. *Rice* (1898) 105 Ga. 525; *Norris* v. *Ile* (1894) 152 Ill. 190; *Hayes* v. *Nourse* (1889) 114 N. Y. 595. This, manifestly, has no application to the defendant—except perhaps where he is claiming affirmative relief, in which case it would seem that he might be considered in respect to that matter as the plaintiff. If this conclusion and the foregoing are correct, the result is that after a plaintiff has filed his pleading and served process, the defendant may have a lien upon the property in dispute which he may enforce years afterward against an innocent purchaser for value, provided through plaintiff's inaction the suit has not been dismissed. Certainly such a doctrine bears little relation to the law of notice. A recent decision of the Supreme Court of Georgia is in point. One H. W., holding defendant's note, and, as security, warranty deeds of certain property already mortgaged, sued on the note, praying judgment and a special lien upon the property. No further pleadings were filed or proceedings had for nearly twelve years. Meanwhile H. W. conveyed to E. W., a certain bank levied upon the property under an execution against E. W., bought in the property at the sheriff's sale, and, upon notice of the original suit, intervened as party plaintiff. Counsel for the bank argued that the bank could not be affected with constructive notice of the original suit because it was not duly prosecuted; but the court held that the lis pendens commenced upon the filing of the original petition by H. W., that the defendant was then entitled to have the deeds in question cancelled, and that no laches of H. W. could deprive defendant of his right. *Bridger* v. *Exchange Bank* (Ga. 1906) 56 S. E. 97. The decision is sound, upon the principles presented above, and is worthy of notice as indicating the full extent of the operation of lis pendens in favor of the defendant.